

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GREGORY CHAPMAN,

Petitioner,

v.

DOUG WADDINGTON

Respondent.

Case No. C05-5407RJB

ORDER ON PENDING MOTIONS

This habeas corpus petition has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4. Petitioner seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. (Dkt. # 15).

Before the court is respondents motion for a more definite statement, (Dkt. # 22), and petitioner's motion asking that the last three pages of his petition be struck from the record and that he be appointed counsel. (Dkt. # 23).

Respondent notes that the last three pages of the petition are pleadings from a state court brief that raise issues that are not in the body of the petition itself. (Dkt. # 22). Respondent asks that petitioner provide a concise statement of the claims. In response petitioner asks to strike the last

ORDER

1 three page of his petition from the record.

2 Petitioner has provided clarification by way of his motion. He indicated he did not intend to
3 raise additional issues by including the state briefing. The court holds that the last three pages of the
4 petition were not intended to raise issues independent from the body of the form petition. Thus,
5 respondents motion is **GRANTED**. However, the court believes the clarification now provided is
6 sufficient.

7 The last three pages of the petition will remain in the file but will not be considered by the
8 court. As to the request for counsel, the Court, having reviewed the record, hereby finds and
9 ORDERS:

10 (1) There is no right to have counsel appointed in cases brought under 28 U.S.C. §
11 2254 unless an evidentiary hearing is required, because the action is civil, not criminal, in nature. See
12 Terravona v. Kincheloe, 852 F.2d 424, 429 (9th Cir. 1988); Brown v. Vasquez, 952 F.2d 1164, 1168
13 (9th Cir. 1992); and Rule 8(c) of the Rules Governing Section 2254 Cases in the United States
14 District Courts. An evidentiary hearing has not been granted in this case. Further, the claims in the
15 petition are adequately set forth and articulated. Petitioner's motion for appointment of counsel (Dkt.
16 # 23) is therefore **DENIED**.

17 (2) The clerk is directed to send a copy of this Order to petitioner and counsel for
18 respondent.

19 DATED this 28th day of October, 2005.
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25 Karen L. Strombom
26 United States Magistrate Judge
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ORDER